IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9777 OF 2004

Smt.Raubai Pandu Jadhav & Ors. ..Petitioners.

Vs.

Shri.Bajirao Devram Jadhav ..Respondent.

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Mr.M.S.Karnik for the Petitioners.

Mr.Rajiv Matkar for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

8th April, 2005.

P.C. :

The Respondent has instituted Special Civil Suit 131 of 2004 before the Learned Civil Judge, Senior Division, Nashik against the Petitioners for the recovery of an amount of Rs.9,12,080.50 on the ground that the Respondent is entitled to a half share in the amount of compensation that was received by the Petitioners for the acquisition of land. An interim injunction was also sought restraining the State Bank of India from allowing the encashment of a cheque for

compensation. On 23rd April, 2004 the Trial Judge issued an interim injunction restraining the Bank from paying over the proceeds to the extent of an amount of Rs.9,12,088/-. At the same time, a notice was issued on the application to the Petitioners who are Defendants 1 to 3 with a direction to them to furnish security in the amount of Rs.9,15,000/- in Court. It appears that the Petitioners have been unable to furnish security. Time appears to have been granted to the Petitioners to file their written statement and on 15th September, 2004 a prayer was made before the Trial Court to take the written statement on the record. That has been rejected on the ground inter alia that since security has not been furnished in terms of the interim order dated 23rd April, 2004, the written statement should not be taken on record. In my view, the Learned Trial Judge has mixed up the issue in regard to the furnishing of security with the question as to whether the written statement should be accepted. There is no reason why the written statement should not be taken on record. In the circumstances, this Petition is disposed of by directing the Learned Trial Judge to accept the written statement filed

by the Petitioners on the record of the proceedings. Counsel appearing on behalf of the Respondent states that since the examination-in-chief of the Respondent - Original Plaintiff has already been concluded, liberty may be granted to the Respondent to lead such further evidence as may be necessary in view of the fact that the written statement is directed to be taken on record. It would be open to the Respondent to move a proper application before the Trial Court which shall be considered and disposed of. The Petition is accordingly disposed of.